

In re Disciplinary Proceeding Against Eiler
Dissent by Alexander, J.

No. 200,701-5

ALEXANDER, J. (dissenting)—I disagree with the lead opinion’s conclusion that King County District Court Judge Judith Eiler did not violate Canons 1, 2(A), and 3(A)(4) of the Code of Judicial Conduct. In my view, the lead opinion describes conduct by Judge Eiler that clearly demonstrated her failure to observe high standards of judicial conduct that preserve the integrity of the judiciary (Canon 1). This conduct also served to undermine the public’s confidence in the integrity and impartiality of the judiciary (Canon 2(A)), and it impaired the right of “legally interested” persons to be heard (Canon 3(A)(4)). Indeed, the lead opinion’s statement that Judge Eiler’s “impatient, undignified, rude, demeaning, and discourteous behavior in the courtroom” was “frequent and serious” and was “injurious to the pro se litigants and attorneys who appeared before [her]” belies any conclusion that the aforementioned canons were not violated. Lead opinion at 18, 19.

Our state’s courts of limited jurisdiction are often referred to as the “people’s courts.” They occupy that status because each day large numbers of litigants, witnesses, and spectators file into their courtrooms. While it is certainly

understandable that the judges who preside over these courts may often feel stressed as they confront crowded court dockets and preside at the many hearings and trials where the parties before them are not represented by counsel, that does not excuse conduct by a judge of the sort described in the lead opinion. Statements by a judge implying that a litigant is an “idiot” or “stupid” and the rendering of other derisive comments about persons who are before the judge is not conduct that engenders respect for the judiciary or provides confidence in the impartiality of the justice system. By the same token, Judge Eiler’s act of whistling and pounding on the bench in the manner disclosed by the electronic record is unacceptable judicial conduct.

Finally, I must say that I strongly disagree with the lead opinion’s conclusion that we should merely censure Judge Eiler rather than accept the recommendation of the Judicial Conduct Commission that she be suspended without pay for 90 days. I reach my decision, in part, because I believe that Judge Eiler violated Canons 1, 2(A), and 3(A)(4) in addition to the canon that the lead opinion holds she has violated. My principal reason, though, for favoring the recommended suspension is that this is not the first time Judge Eiler’s conduct has drawn the attention of the Judicial Conduct Commission. As the lead opinion notes, in 2005 Judge Eiler stipulated that she had violated the same canon that the Commission on Judicial Conduct found that she violated here. Although the lead opinion has not upheld the commission’s determination that Judge Eiler violated Canons 1, (2)(A), and 3(A)(4), it does conclude that she has violated Canon 3(A)(3) for the second time. This repetitive misconduct

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calls for a penalty more severe than a reprimand, the penalty meted out in 2005. The lead opinion concedes that point, indicating that Judge Eiler’s long years on the bench and her repetitive misconduct calls for “a more serious punishment” than that which was imposed for her earlier misconduct. Lead opinion at 25. It, nevertheless, goes on to impose a sanction that is only slightly more severe than the 2005 sanction—a censure accompanied by a five-day suspension. In my judgment, Judge Eiler’s failure to improve her judicial behavior merits a sanction that is considerably more severe than the sanction imposed on the prior occasion.

For the reasons stated above, I would have us suspend Judge Eiler without pay for a 90-day period, a sanction that, in a real sense, is harsher than that imposed in 2005. Because the lead opinion reaches a different conclusion, I dissent.

AUTHOR:

Justice Gerry L. Alexander

WE CONCUR:

Chief Justice Barbara A. Madsen

Justice Mary E. Fairhurst

Justice Debra L. Stephens
